

*INTERPRETING AND IMPLEMENTING THE LOW
INCOME VENDOR SELECTION PROVISION OF
ELECTRIC AND GAS UTILITY ENERGY EFFICIENCY
PROGRAMS (SECTIONS 8-103B AND 8-104 OF THE
PUA)*



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NEW SECTION 8-103B(C) PROVIDES:

- Implementation of energy efficiency measures and programs targeted at low-income households should be contracted, when it is practicable, to independent third parties that have demonstrated capabilities to serve such households, with a preference for not-for-profit entities and government agencies that have existing relationships with or experience serving low-income communities in the State.

LOW INCOME PROGRAM DESIGN AND IMPLEMENTATION STRATEGIES – WHAT DIFFERENTIATES THESE PROGRAMS FROM OTHER EFFICIENCY SECTORS?

- Require larger incentives (participants have little to no discretionary income for co-pays);
- Implementation is aided by leveraging funding, such as WAP, to enable needed and meaningful efficiency investments;
- Implementation is aided when local, experienced, trusted third-party vendors get involved;
- More cost-effective uptake if marketing and outreach is done by trusted community-based partners;
- Serve larger public policy goals of ensuring connectivity to the utility network;
- Because larger investments are required for retrofit efforts, maximizing savings and hitting incentive targets should not primarily drive investment decisions.

REGARDING STATUTORY INTERPRETATION...

Illinois case law provides:

- The primary object in construing a statute is to ascertain and give effect to the intent of the legislature.
- The most reliable indicator of legislative intent is the language of the statute, given its plain and ordinary meaning.*

○ *People v. Chenoweth*, 2015 IL 116898, ¶21

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“PRACTICABLE”

○ Merriam Webster:

1. capable of being put into practice or of being done or accomplished :

feasible <*a practicable plan*>

2 : capable of being used :

usable <*a practicable weapon*>

“PRACTICABLE”

- ❑ As defined, the word references *feasibility* rather than utility preference (for other vendors)
- ❑ This limits utility discretion in selecting vendors
- ❑ The question to be answered: Is contracting with these vendors possible?

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“INDEPENDENT”

○ Definition of *independent*

1 : not dependent: such as

a (1) : not subject to control by others : self-governing
(2) : not affiliated with a larger controlling unit <*an independent bookstore*>

b (1) : not requiring or relying on something else : not contingent <*an independent conclusion*>

(2) : not looking to others for one's opinions or for guidance in conduct

(3) : not bound by or committed to a political party

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“...PARTIES THAT HAVE DEMONSTRATED CAPABILITIES TO SERVE SUCH HOUSEHOLDS,”

- Parties that have demonstrated capabilities providing energy efficiency measures/programs to low income utility customers in Illinois;
- “Capabilities” encompasses more than maximizing savings to achieve a savings goal;
- What was the GA’s intent in specifically identifying/protecting this group of vendors?

WHAT OTHER CRITERIA TO APPLY?

- Implementation of energy efficiency measures and programs targeted at low-income households should be contracted, when it is practicable, to independent third parties that have demonstrated capabilities to serve such households, with a preference for not-for-profit entities and government agencies that have existing relationships with or experience serving low-income communities in the State.

LOW INCOME VENDOR SELECTION

PUNCH LIST:

- Is it “practicable” (feasible) to hire the vendor?
- Is the vendor an “independent third party”?
 - Different than the typical for-profit vendor
- Has the vendor demonstrated a capability to serve such households?
- Must apply a “preference for not-for-profit entities and government agencies that have existing relationships with or experience serving low-income communities in the State.”
 - Preference language speaks for itself

APPLY TO GAS COMPANIES' VENDOR SELECTION? YES

- These primarily will be joint programs:

Addressing the mismatch in electric/gas funding, 8-103B(b-25) states:

In the event an electric utility jointly offers an energy efficiency measure or program with a gas utility under plans approved under this Section and Section 8-104 of this Act, the electric utility may continue offering the program, including the gas energy efficiency measures, in the event the gas utility discontinues funding the program. In that event, the energy savings value associated with such other fuels shall be converted to electric energy savings on an equivalent Btu basis for the premises. However, the electric utility shall prioritize programs for low-income residential customers to the extent practicable. An electric utility may recover the costs of offering the gas energy efficiency measures under this subsection (b-25).

- Also, Sec. 8-104 still provides:

Not later than January 1, 2012, the Commission shall develop and solicit public comment on a plan to foster statewide coordination and consistency between statutorily mandated natural gas and electric energy efficiency programs to reduce program or participant costs or to improve program performance. Not later than September 1, 2013, the Commission shall issue a report to the General Assembly containing its findings and recommendations.

- Bottom line: gas companies need to work with electric companies and play by the same rules.

PUBLIC SECTOR PROGRAMS FACE SIMILAR UNIQUE CHALLENGES AS LOW INCOME PROGRAMS

- Require larger incentives (participants have little to no discretionary income for co-pays);
- Implementation is aided by leveraging funding to enable needed and meaningful efficiency investments;
- More cost-effective uptake if marketing and outreach is done by trusted community-based partners;
- Serve larger public policy goals of ensuring connectivity to the utility network;
- Serve larger public policy goals of keeping utility service affordable for these customers in particular, given their public sector status;
- Because larger investments are required for retrofit efforts, maximizing savings (and hitting incentive targets) should not drive investment decisions.

OPERATIONALIZING STATUTORY LANGUAGE - PROPOSAL

- ❑ Identify all non-profits and government entities who are currently serving low-income customers OR have demonstrated capabilities of serving low-income customers in IL in the past.
 - Also identify other vendors who have demonstrated capabilities to serve low income customers.
- ❑ Create Low Income and Public Sector Bidder's Lists with all qualifying entities.
- ❑ Publicize Low Income and Public Sector Bidder's Lists, with notice and opportunity for other entities to be added to the list.
- ❑ Send all RFPs that target low-income customers to all entities on Low Income Bidder's List. Do the same for Public Sector customers.
- ❑ Award contracts to non-profits/government entities who receive most points in bid evaluation process.
 - Award contracts to other vendors only if no qualified non-profits/government entities submitted bids that met threshold bid requirements. If utility determines no qualified non-profit/government entity, utility must provide written justification as to why no qualified non-profit/government entity identified. Justification to be provided to Staff and non-financially interested stakeholders.
- ❑ Create direct contractual relationship with utility, not through another vendor under contract to the utility.
 - Fulfills intent of "independence" language in statute
 - Cheaper? One less layer of administrative costs? (needs further discussion)

FEEDBACK REQUESTED FOR PURPOSES OF REFINING PROPOSAL

- Questions/Comments?

